42 Box 9 - [JGR/*Chadha* re: District of Columbia] (6) - Roberts, John G.: Files SERIES I: Subject File

Volume 107 - Number 120 - Page 1073 Wednesday, June 20, 1979

THE DAILY WASHINGTON
Law Reporter

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SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA

RESOLUTION

The Board of Judges of the Superior Court of the District of Columbia is informed that the Honorable Marion S. Barry, Jr., Mayor of the District of Columbia, has included in his 1979 legislative program, forwarded to the 96th Congress, three proposals in respect of judicial affairs. They are to authorize (1) the transfer of the functions of the United States Marshal from the United States to the District of Columbia Government, (2) the transfer of prosecution of local crimes from the United States Attorney for the District of Columbia to the District of Columbia Government, and (3) the transfer of the power of appointment and confirmation of judges from the President and the U.S. Senate to the Mayor and the City Council.

This Board is likewise advised that the first two of these measures, the transfer of functions of the United States Attorney and the United States Marshal, have received executive policy approval and that steps are being taken to implement the action. These two proposals, if enacted by the Congress, will effect major changes in the operation of this Court and the reasons therefor are readily discernible.

The Superior Court was designed and structured by the Congress as an institution concerned with legal affairs pertaining peculiarly to the District of Columbia. Largely because of the unique federal presence in the District of Columbia, the Court is empowered to conduct its business with the authority of a Court of the United States, established under Article I of the United States Constitution. The most significant example of the manner in which this Court applies the power of a United States Court to local problems lies in the field of criminal law. Violations of the District of Columbia Criminal Code are not considered municipal concerns only, but are crimes against the United States to be prosecuted in the Superior Court by the United States Attorney. To accomplish this important and difficult mission, the United States Attorneys for the District of Columbia throughout the years have maintained a strong core of career prosecutors fortified by a capable staff of younger lawyers recruited and trained with great care. Similarly, for the security of its courtrooms and the management of prisoners throughout its system and the enforcement of its writs, the Court has depended upon the fidelity, skill, and experience of the United States Marshal and his deputies. Further, prisoners sentenced by the Court are placed in

(Cont'd. on p. 1076 - Resolution)

RESOLUTION

(Cont'd. from p. 1073)

the custody of the Attorney General of the United States making available, when needed, the facilities of the entire United States prison system. In performing these assignments, the federal offices concerned are authorized to act across state lines, to call for assistance from other government agencies, and have through the years become accustomed to adapting their functions to the routines and practices of this particular Court. Without federal involvement, these powers and resources cannot be duplicated by any single political unit.

Manifestly, the elimination of this entire complex structure, without the most careful and detailed legal and fiscal planning for its replacement, can do nothing less than create a severe instability in the administration of criminal justice in the District of Columbia.

Finally, this Board is compelled to comment on that proposal which would authorize the Mayor of the District of Columbia to appoint the judges of the District of Columbia Courts. An independent judiciary, that is, one capable of reviewing the actions of the legislative and executive branches of government totally free from bias, fear, favor, or retaliation, is the *sine qua non* of an effective judicial system. The District of Columbia Government is the most constant litigant in the Civil Division of our Court, and if, indeed, the prosecution of criminal cases were to be transferred to the District of Columbia, the overwhelming majority of the litigation conducted in our Court would involve the District of Columbia as a party. Legislation enacted by the City Council and executed by the District of Columbia's executive branch is ruled upon by the judges of our Court on a daily basis. The legal propriety of revenue provisions, housing codes, rental acts, administration procedures, school strikes, and the adequacy of mental health, penal, and juvenile facilities constitute a large part of our Court's regular calendar. In these matters—and numerous others—the executive and legislative branches of the District of Columbia Government have a very direct interest. In a truly effective judicial system, adjudication of these matters must be accomplished by judicial officers who are independent of the coordinate branches of government. This essential independence is seriously undermined when those coordinate branches appoint and reappoint the judicial officers who must rule on the propriety and legality of their various actions.

Legislative history clearly shows that Congress provided for Presidential appointment of judges of the District of Columbia Courts for one reason only: to achieve and maintain an independent judiciary—a judiciary which can perform its duties fairly and completely without in any manner being intimidated by the possibility of pressure from the other branches of government. The present appointing mechanism guarantees that necessary independence; the proposed change in the power of appointment does not.

In conclusion, it is the position of the Board of Judges that there should be no changes made in the organic structure and basic method of operation of the Superior Court of the District of Columbia such as those proposed by the Mayor in his 1979 Legislative Program unless and until it is first demonstrated to us by detailed legal and fiscal plans that the proposed changes will improve and not adversely affect the present administration of justice in the District of Columbia.

OPTIONAL FORM NO. 10
JULY 1973 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : Hon. Charles F. C. Ruff
Acting Deputy Attorney General

DATE: Sept. 7, 1979
CSR:owt

FROM : Carl S. Rauh
United States Attorney
District of Columbia

SUBJECT: Comments Concerning "Plan for Judicial System Autonomy for the District of Columbia" (Draft of September 3, 1979)

This memorandum is a quick response to your request for this Office's views concerning the Draft Plan's provision (at pages 45 through 48) for a "Certification Procedure" in circumstances where a particular criminal transaction violates both federal and local statutes and a determination must be made whether the offense(s) involved should be prosecuted by the United States Attorney or a local prosecutor.

The Draft Plan proposes that existing law, which permits the United States Attorney to prosecute both federal and local offenses arising out of the same criminal transaction in the United States District Court, be modified because retention of this statutory procedure would "seriously undercut" the "autonomy" of the judicial system in the District of Columbia. (See Draft Plan, p. 46). In its place, the Plan proposes a certification procedure whereby the United States Attorney may prosecute criminal conduct which is "essentially local in character" only where there is "some special and important federal interest involved", and the Attorney General or Deputy Attorney General of the United States certify that the particular criminal conduct involves "(1) a national law enforcement or criminal justice priority for an offense engendered principally because of the proximity of the National Capital and (2) the investigation and prosecution of the case would most likely be more efficiently achieved by handling in the Federal Court." (See Draft Plan, pp.46, 47.)

In our view, the proposed certification procedure is unnecessary, unwise, unworkable, and possibly unconstitutional. We believe that it should be deleted and that the existing statutory framework, permitting the

United States Attorney to prosecute both local and federal offenses growing out of the same criminal transaction in the United States District Court where a federal statute has been violated, should be retained.

It seems to us unlikely that the drafters of this portion of the plan fully appreciated the serious problems that would be presented by implementation of the Certification Proposal. In essence, the procedure would withhold from the United States Attorney for the District of Columbia the authority to prosecute all violations of federal statutes committed in the District of Columbia--authority possessed by federal prosecutors in every other federal district in the Nation--where the federal violation could be deemed to involve criminal conduct "essentially local in character", unless there were a special certification by the Attorney General or the Deputy Attorney General indicating that federal prosecution of the case would satisfy vague federal priorities and would be "more efficient" than local prosecution.

This proposed certification procedure, reducing the authority of the federal prosecutor below that of all other United States Attorneys in a jurisdiction which is the seat of the national government, which is not a state and in which there are special federal interests that do not exist in the individual states, is, we think, absurd on its face. It would unwisely circumscribe the authority of the United States Attorney in the District of Columbia to prosecute violations of federal statutes by placing upon that federal official constraints over his jurisdiction that exist in no other federal district. See 28 U.S.C. §547 (United States Attorneys are empowered to "prosecute for all offenses against the United States"). It is unworkable because the concepts of "essentially local" criminal conduct, "national law enforcement or criminal justice priorities", and "efficiency" of local versus federal prosecution which must be determined in order to utilize the procedure are hopelessly vague. And the proposed certification procedure is unnecessary because the existing statutory procedure has proven to be a workable means in the past for discriminating between those offenses which merit prosecution in the federal courts and those which should be prosecuted in the local courts. Moreover, the existing procedure is probably the only procedure which would avoid double jeopardy problems that would be presented in the event that a local district prosecutor were to enjoy dual jurisdiction to prosecute the local aspects of a criminal transaction at the same time a federal prosecutor could prosecute the federal offenses involved in such a transaction.

In summary, then, it is our view that the proposed certification procedure would unwisely place limits upon the jurisdiction of the United States Attorney for the District of Columbia to prosecute violations of federal statutes--limitations that are placed upon no other United States Attorney in the federal system. Moreover, such a certification procedure is unnecessary, since the existing law, permitting the United States Attorney to prosecute in federal court offenses which involve both federal and local statutory offenses, has proven workable and effective. Finally, any procedure other than the present one would be likely to invite double jeopardy bars to prosecutions of cases involving both federal and local offenses, presenting insurmountable barriers to the effective prosecution of many serious criminal offenses.*/

With respect to the issue of how the federal and local prosecutor would keep each other informed about investigations and cases, obviously this is not something that can be legislated very easily. One problem is that the present proposal creates two local prosecutors--an Attorney General "as chief prosecuting officer" with general supervisory responsibility and a District Attorney who is charged with the responsibility of directing the prosecutor's office. Frankly, its hard to tell from the proposal whether the local prosecutor is the District Attorney or the Attorney General. It is also difficult to tell with whom the United States Attorney should be dealing.

In closing, I would note that since your request was limited to asking for our comments concerning the certification procedures proposed in the Draft Plan, we do not intend to comment generally on the Plan at this time. I think I should point out, however, that a number of attorneys in this office, including myself,

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*/A certification procedure may be appropriate for criminal conduct which only violates local statutes but involves a "national" or "federal" interest. The Hanafi takeover case might be such a situation or the kidnapping or murder of a Senator's or Cabinet Officer's wife or children. In the appropriate case, the federal government should be able to assert jurisdiction by certification of the United States Attorney that it is in the "federal interest" to do so.

have serious problems with the efficacy of this Plan generally, as well as with other particular aspects of it. Our perception is that this proposal is designed more to politicize than to professionalize the local prosecutive function. The plan purports to be "based on the simple premise that the citizens of the District of Columbia deserve to continue to be afforded an increasing measure of self determination and authority" over the administration of criminal justice and the prosecution of criminal cases; yet, the plan does not provide for any citizen participation in selection of the local prosecutor, either by commission or election, but rather concentrates in the Office of the Mayor the enormous authority not only to appoint an Attorney General, a local District Attorney, a Solicitor General and a "District Counsel", but also the appointment of all trial and appellate judges, the police chief, the corrections chief and the parole board. Clearly, such a concentration of power is without precedent in any other city in the nation.

The District of Columbia is the Nation's Capital, the seat of our national government, and the place where embassies of foreign governments have been established. The District of Columbia has been given a special place in the United States Constitution and, in my view, the Department of Justice has a special responsibility to ensure the safety of the millions of people who either live, work, or visit here each year. In this regard, the Department of Justice must be satisfied that the safety of these people will be protected by a workable, effective, and high quality prosecutor's office before its stamp of approval is put on any plan. In my view, adequate time must be afforded for a careful and thorough review of this or any subsequent draft plan.

cc: Mr. Laurence S. McWhorter
Assistant Director
Executive Office for U. S. Attorneys

Specter Pushes, Barry Hedges, on Plea For Seven Superior Court Judgeships

By Ed Bruske
Washington Post Staff Writer

Sen. Arlen Specter (R-Pa.) yesterday vowed to press Democratic leaders of the House District Committee for immediate passage of legislation that would authorize hiring seven new judges for the D.C. Superior Court.

Specter, making his remarks at a Senate subcommittee hearing, said he is "appalled" by the growing backlog of criminal cases in D.C. Superior Court.

The District's budget director, Betsy Reveal, in the strongest indication yet by city officials of D.C. Mayor Marion Barry's position on the legislation, said Barry believes he "cannot affirmatively agree or disagree" with the plan for new judges because of home rule legislation pending in the House.

Federal law currently sets the number of Superior Court judges at 44. The president nominates candidates for judgeships to the Senate and Barry has said that he, not the president, should pick the city's judges.

Reveal said Barry, although "sympathetic to the court's problems," will wait to see whether he is granted authority to appoint additional judges before supporting a measure to hire them.

Reveal indicated that Barry's position on the judges hinges on Democratic-sponsored legislation currently before a House subcommittee that would shift judicial appointment authority from the White House to the District Building.

Another proposal would transfer responsibility for prosecuting crimes from the U.S. Attorney's office to the city.

SEN. ARLEN SPECTER
..."appalled" by backlog in court

Reveal told Specter that she was "not suggesting" that the home rule reforms and the plan for additional judges "are linked legislatively."

Congress earlier passed nearly $3 million in initial funding for seven new judges, but only after House District Committee Chairman Rep. Ronald V. Dellums (D-Calif.) had language deleted that would have authorized actual appointments.

Last week, District congressional Del. Walter E. Fauntroy told a reporter he is opposed to hiring the new judges, suggesting that the city could instead save money and relieve its backlog problems by using more retired judges and hearing commissioners.

City officials have expressed increasing reluctance to accept additional fiscal resonsibilities unless they are allowed more control over them.

Superior Court Chief Judge H. Carl Moultrie I has urged Fauntroy and Barry to lend immediate support for the new judges, telling Barry that the need for judges "transcends the question of home rule."

Specter, who originally proposed the additional judges, voiced similar concerns in an interview yesterday, saying he will "inform the Congress about the material risks" posed by defendants waiting months on bond or in jail for trial.

Moultrie and court executive officer Larry P. Polansky testified that backlogs on the court have reached unprecedented levels, with 3,100 felonies and 3,800 misdemeanors awaiting court action.

Nearly 1,600 of those defendants are in jail awaiting trial, Polansky said. The average time from arrest to sentencing in felony cases has reached nearly 11 months, he said, and many cases stretch longer than a year.

Specter, citing a recent appeals court decision overturning the first degree murder conviction of a man who waited 24 months for trial, said the lengthy delays raise "a serious question of denying [prisoners'] rights to speedy trials."

Specter, a former district attorney from Philadelphia, called the number of defendants free on bond—about 5,300—"intolerable," saying they pose an "enormous danger to the community."

"I'm really appalled when I see these statistics," Specter said. "People have no idea of the impact on street crime when you have that many people free on bond."

Specter said he would not comment on the positions taken by Barry and Democrats in the House before talking personally with the legislators.

proofed. The rectory section of the building was also improved, restoring its original red-brick appearance and adding new windows as well as a new furnace. Reverend Nelson Betancur of Colombia, South America, arrived at St. Agnes on December 14, 1979, to work with the Hispanic community that worships at St. Agnes Church.

As St. Agnes Parish completes its first hundred years of service in the vineyard of the Lord, it can look back with a sense of satisfaction knowing that its service to the church and to our people was carried out by many dedicated people, religious and lay, with sincere dedication and devotion. As we embark on our second hundered years, we pray for God's blessings on our people and the work that is left to be accomplished through them.

Mr. Speaker, during the course of the year, the clergy and laity of St. Agnes Church have been celebrating this most importanct centennial history of their parish, devoting themselves in an outstanding program dedicated to the remembrance of the blessings of St. Agnes parish during the past 100 years and strengthening the resolve of all to continue their most noteworthy effort in service to God and mankind.

I am pleased to have this opportunity to seek national recognition of the distinguished pastors, associate priests, sisters, and congregation of St. Agnes Roman Catholic Church. In their dedication and devotion to our people, in service to God, through their noble deeds and quality leadership, they have truly enriched the cultural, educational, and religious endeavors of our community, State, and Nation. We do indeed salute them and the members of St. Agnes Roman Catholic Church of Paterson, New Jersey, upon the commemoration and celebration of their centennial anniversary.●

IMPROVING THE CRIMINAL JUSTICE SYSTEM IN THE DISTRICT OF COLUMBIA

HON. STEWART B. McKINNEY

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 18, 1983

● Mr. McKINNEY. Mr. Speaker, today I have introduced legislation which will contribute to the congressionally instituted efforts to bring about improvements in the criminal justice system in the District of Columbia.

In late September, Congress approved the District of Columbia Appropriations Act of Fiscal Year 1984, and last week that measure was signed into law. One of the most significant features of Public Law 98-125 is a special Federal contribution of $25 million to address identified deficiencies in the local judicial process. Most of this funding, some $22.3 million, is directed to the District of Columbia Department of Corrections for physical and programmatic improvements in the treatment of prisoners. The remaining $2.8 million is provided to fund seven additional Superior Court judges, plus related equipment, space and support staff. The inclusion of these additional judges will help to reduce the existing case backlog and shorten the period of time required for a case to come to trial. While it is possible for the city to immediately proceed with the utilization of the funding provided for the Department of Corrections, the related and important funding for the additional judges is made subject to the enactment of authorizing legislation.

If the efforts of Congress to improve the local criminal justice system are to have any hope of being successful, the additional judges for the Superior Court must be authorized as expeditiously as possible. The existing process of nomination, selection and confirmation will be time consuming. If there is any intent to have these additional judges in place this fiscal year, so that their impact can be felt, the authorization should be enacted prior to the expiration of this session of Congress.●

RESOLUTION OF COMMENDATION TO JEAN JACOBS

HON. BARBARA BOXER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 18, 1983

● Mrs. BOXER. Mr. Speaker, the following is a resolution of commendation to an outstanding constituent in my district.

Whereas, the citizens of these United States should be aware of the contributions that Jean Jacobs has made to countless children and their families, and

Whereas, the juvenile institutions of this country have benefited greatly from the reforms instituted by Jean Jacobs and

Whereas, the citizens of San Francisco and the Bay Area have looked to Jean Jacobs for her leadership and witnessed her service on numerous city commissions, boards of directors and advisory councils and

Whereas, the occasion of the 8th anniversary of the Coleman Children and Youth Services Project which Jean Jacobs founded is a fitting occasion to recognize her accomplishments, therefore, be it

Resolved, That the 6th Congressional District hereby recognizes and salutes Jean Jacobs for her dedication to the future of our nation and our young people, and be it further

Resolved, That word of this tribute will be known by publishing this proclamation in the official Congressional Record of the United States.●

CABOOL VOCATIONAL AGRICULTURE BUILDING

HON. IKE SKELTON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 18, 1983

● Mr. SKELTON. Mr. Speaker, the spirit of community involvement is prospering deep in the heart of the Missouri Ozarks. The community of Cabool population, 1,848, has undertaken the task of funding and constructing a new vocational agriculture building without the use of Government assistance. The spirit that has been generated through the actions of this community, demonstrates the pride and dedication which is truly characteristic of the American way. As one local small businessman stated, "I can see that this community is already thinking better of itself because of this project. The kids that benefit from this project are our future, it we don't back them, we don't have a future." I take pride in representing this fine community and wish to recognize their accomplishments.●

OMNI MAGAZINE AND SPACE DEVELOPMENT

HON. JOHN CONYERS, JR.

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 18, 1983

● Mr. CONYERS. Mr. Speaker, Omni, a monthly magazine on science and technology, with a readership of more than 5 million, has devoted its October 1983, fifth anniversary issue to space science and America's space program. Omni's editor, Bob Guccione, writes:

Science has never been more productive than in the last decade * * *. Only space development, perhaps the most universally visible of all technological frontiers, has fallen behind * * *. No major new space venture has been undertaken since the shuttle program was begun. It is time—long past time—for a new commitment to space.

Omni has played a large role in educating its readers on science issues and in building a constituency for science development. I want to share his point of view with my colleagues, which follows:

[From Omni Magazine, October 1983]

FIRST WORD

(By Bob Guccione)

In July of this year, NASA Adminstrator James Beggs announced that he expected to receive the Reagan Administration's blessing for the development of a permanent manned space station in the very near future. If Beggs is right, it will be joyous news indeed. This next step in American space development is as logical as it is long overdue, particularly since the Soviet space program continues at a pace that NASA could never have afforded even during its spirited heyday.

An official declaration of support—backed by the kind of money and materials such a vigorous program requires—would be a fitting tribute to the space agency in this, its twenty-fifth anniversary year. It would further justify the faith that moved us to create *Omni* five years ago this month.

When *Omni* was born, its editorial purpose was already as clear as its graphic beauty to give science and technology the popular voice they had never had. To help laymen experience and understand the excitement discovery and the quality of the scientific and philosophical vision that will

WALTER E. FAUNTROY
DISTRICT OF COLUMBIA

REPLY TO:

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Congress of the United States
House of Representatives
Washington, D.C. 20515

COMMITTEES:
DISTRICT OF COLUMBIA
SUBCOMMITTEE:
CHAIRMAN, FISCAL AFFAIRS AND HEALTH

COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS
SUBCOMMITTEE:
CHAIRMAN, DOMESTIC MONETARY POLICY

SELECT COMMITTEE ON NARCOTICS ABUSE AND CONTROL

November 10, 1983

Senator Arlen Specter
United States Senate
331 Hart Senate Office Building
Washington, D.C.

Dear Senator Specter:

I believe today's exploratory meeting was fruitful. I am currently in the process with my colleague, Mervyn Dymally, of pursuing the prospect of District of Columbia Committee hearings on the authorization of seven additional judges sometime next week.

I wanted to underscore in this letter the main points that I made during the course of our meeting, particularly on the issue of nomination of judges and of selection of assistant United States attorneys.

APPOINTMENT OF DISTRICT OF COLUMBIA SUPERIOR COURT JUDGES

Since taking office, President Reagan has appointed fourteen (14) judges to the District of Columbia Superior Court.

Of the fourteen Superior Court judges, the President has appointed only two (2) Blacks and one (1) Hispanic. Fourteen (14) Blacks have been nominated by the District of Columbia Judicial Nomination Commission.

SELECTION OF ASSISTANT UNITED STATES ATTORNEYS FOR THE DISTRICT OF COLUMBIA

Currently, there are one hundred and eighty two assistant United States attorneys (AUSAs) in the D. C. office, thirty (30) are Black, far fewer than half are women. One of the 30 Blacks is on detail to the Virgin Islands.

Since the Reagan Administration took office, gains for women and Blacks, experienced under the Carter Administration, have come to a virtual halt; indeed, some gains have been lost.

Of particular note is that once Stanley Harris was named as District of Columbia U. S. Attorney, the criminal section of the U. S. District Court for the District of Columbia was segregated. The three Blacks who had been assigned there by former D.C. U. S. Attorney, Chuck Ruff, were suddenly reassigned to Superior Court. Presently, there are no Blacks prosecuting criminal matters in federal court.

Also of particular note is that there is only one (1) female supervisor and two (2) Black supervisors in the Office. There are no Black female supervisors.

The record of the Reagan Administration in nominating judges to the D.C. Superior Court and of hiring and promoting assistant United States attorneys is at best dismal, particularly as far as Blacks are concerned.

As I indicated in the meeting, I believe the twin issues of judicial and prosecutorial autonomy present the best solution to correcting this poor record. Linking the authorization of the seven judges to D. C. Mayoral appointment of those judges might be a reasonable approach during this Congress. These matters must be addressed, and I am encouraged by your understanding of these concerns.

I look forward to further discussions over the next few days.

Thank you for your cooperation and understanding.

Sincerely,

/signed/
WALTER E. FAUNTROY
Member of Congress

Copy - Congressman Stewart B. McKinney

bcc - Tim Leeth
Bill Bowman
John Gnorski

98TH CONGRESS
1ST SESSION

H. R. 4146

To increase the number of superior court judges in the District of Columbia.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 18, 1983

Mr. MCKINNEY (for himself, Mr. BLILEY, Mrs. HOLT, and Mr. PARRIS) introduced the following bill; which was referred to the Committee on the District of Columbia

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A BILL

To increase the number of superior court judges in the District of Columbia.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 903 of title II of the District of Columbia Code is amended by striking out "forty-three" and inserting in lieu thereof "fifty".

○

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General — *Washington, D.C. 20530*

01 FEB 1983

M E M O R A N D U M

TO: Stanley Harris
United States Attorney
District of Columbia

FROM: SIGNED Robert A. McConnell
Assistant Attorney General
Office of Legislative Affairs

SUBJECT: Modification of the "Duncan Ordinance" Restricting Distribution of District of Columbia Arrest Records

With further reference to my memorandum of January 6, 1983, it is my understanding via the Criminal Division that you feel it would be preferable to approach the District of Columbia Government through your Office rather than through a letter from me. Of course, such an approach is entirely agreeable to me and I hope you will proceed to initiate such contacts as you deem most appropriate to secure consideration of corrective legislation by the D. C. City Council.

By way of background, I am enclosing the memoranda received from the Office of Legal Counsel, Criminal Division and FBI regarding my January 6 memorandum. As you will note, the Criminal Division and the FBI are in disagreement as to whether the description of problems resulting from the "Duncan Ordinance" as set out in the attachment to my January 6 memorandum are accurate. In light of the Bureau's particular interest and expertise in this area, I hope you will work closely with FBI representatives in pursuing corrective legislation.

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I would note that Bill Garvey (324-5456) and Melvin Mercer (324-5454) of the FBI's Identification Division are extremely knowledgable regarding this issue.

Attachments

cc: Attorney General
Deputy Attorney General
Associate Attorney General
Richard Hauser
John Walker, Treasury
Federal Bureau of Investigation
Office of Legal Counsel
Office of Legal Policy
Criminal Division

U. S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

6 JAN 1983

M E M O R A N D U M

TO: Richard A. Hauser
Deputy Counsel to the President

FROM: Robert A. McConnell
Assistant Attorney General
Office of Legislative Affairs

SUBJECT: Repeal of the "Duncan Ordinance" Precluding Participation by the District of Columbia in the FBI's National Criminal Records System

Pursuant to your request, this Office has reviewed the subject issue and has been in touch with appropriate officials of the FBI, Secret Service, and U. S. Attorney's Office for the District of Columbia. There seems to be unanimous agreement that District of Columbia participation in the national crime identification program is highly desirable from a law enforcement standpoint. The focus of our inquiries, therefore, has been how best to achieve this end while at the same time avoiding any unintended consequences.

As you know, the issue of disclosure of criminal history information has been highly controversial, particularly with respect to information relating to arrests where no probable cause determination of criminality has been made by a neutral and detached magistrate. Disclosure of arrest information for employment purposes has been said to contravene the Due Process right to personal privacy, to be racially discriminatory in contravention of the right to Equal Protection of the laws, and -- to the extent arrests are based upon acts of civil disobedience -- to violate the First Amendment. Because of these concerns, efforts were made by some civil libertarians during the 1970's to establish rigid statutory restraints upon access to and use of criminal history information. It was in part to forestall such legislation that the Department of Justice established regulations governing criminal history files.

In light of this background, there is some basis for concern that efforts to amend the "Duncan Ordinance" could "open up" or revive the issue of access to criminal history information to our possible detriment. Our review of the matter persuades us, however, that this issue can be addressed without undue risk of adverse consequences.

More specifically, we propose that an appeal be made to Mayor Barry for his assistance in modifying the District of Columbia Code. As Mayor Barry has adopted a tough anti-crime stance, and as the D. C. City Council has in recent months approved stronger criminal justice legislation than the Congress has been prepared to accept, this course seems both the most efficacious and the least likely to provoke a new round of Congressional debate upon proper uses of criminal history information. I am, therefore, circulating this memorandum and the attached draft letter to Mayor Barry for review and comment by appropriate officials within the Administration.

As the press of other business has delayed the preparation of this proposal, and in view of the apparent desire of affected agencies to proceed expeditiously, I am requesting that comments on the attached draft letter be submitted to my Deputy, C. Marshall Cain (633-4054) no later than January 19.

cc: Attorney General
Deputy Attorney General
Associate Attorney General
John Walker, Assistant Secretary for Enforcement and Operations, Department of the Treasury
Director, Federal Bureau of Investigation
Assistant Attorney General, Office of Legal Counsel
Assistant Attorney General, Office of Legal Policy
Assistant Attorney General, Criminal Division
Stanley Harris, U. S. Attorney, District of Columbia

U. S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

Honorable Marion Barry
Mayor
District of Columbia
District Building, Suite 520
1350 Pennsylvania Avenue, N.W.
Washington, D. C. 20004

Dear Mr. Mayor:

This is to request your attention to a provision of the District of Columbia Code which, in our view, significantly impedes law enforcement efforts not only in the Capital but throughout the nation.

More specifically, 1 D. C. Code §2530 has been interpreted as prohibiting the District of Columbia Metropolitan Police Department from reporting criminal arrest information to the Identification Division of the Federal Bureau of Investigation for law enforcement use by federal, State and local law enforcement agencies, Utz v. Cullinane, 520 F.2d 467 (D.C. Cir., 1975). The District of Columbia is, to our knowledge, the only jurisdiction in the United States which does not routinely supply arrest data to the FBI. In view of its critical posture as the seat of our national government, this non-participation in the national criminal information system is of concern to federal law enforcement officials.

District of Columbia restrictions upon disclosure of arrest information create the following problems:

-- fugitives, parolees, probationers and persons released on bail in other jurisdictions who are arrested in the District of Columbia are not routinely identified as being fugitives or on release status;

-- sentencing courts throughout the United States receive incomplete information as to the criminal histories of defendants because arrests in the District of Columbia are not routinely incorporated within the national information system;

-- persons from other jurisdictions who may constitute a threat to the President or other protected officials are not routinely identified as such when arrested in the District of Columbia;

-- officials covered by the special prosecutor provisions of the Ethics in Government Act (28 U.S.C. 591 et seq.) or occupying sensitive federal positions are not routinely identified as such when arrested in the District of Columbia; and

-- other jurisdictions screening applicants for critical law enforcement or other sensitive publicly licensed positions (such as dealers in firearms and alcohol) are not routinely aware of the criminal histories of applicants to the extent that past criminal acts were committed in the District of Columbia.

In short, the fact that the District of Columbia, a major metropolitan center and the national Capital, is not a participant in the national crime identification system significantly undermines the value of the FBI's central criminal identification system. Although some District of Columbia arrest data is received by the United States Attorney and subsequently reported to the FBI, the great majority of arrests made in the District of Columbia are totally unknown to other law enforcement agencies including the United States Secret Service.

Of course, the existing restriction upon disclosure of District of Columbia arrest records was not a mere aberration. Rather, it was the product of a concern as to the effect of disclosures of criminal history information -- and particularly arrest information -- upon employment opportunities of persons arrested. Although this concern may once have been legitimate, we do not feel that it any longer is in view of the protections now built into the criminal identification system.

Under existing regulations, arrests of juveniles are not maintained in the FBI's information system (28 C.F.R. § 20.32(b)). Similarly, the referenced federal regulation excludes arrests and court actions for "non-serious" offenses such as "drunkenness, vagrancy, disturbing the peace, curfew violation, loitering, false fire alarm, non specific changes of suspicion or investigation and traffic violations" (except for manslaughter, driving while intoxicated and hit and run). Because juvenile and non-serious arrests are not included in the criminal history information system, there is no possibility that such charges will jeopardize a person's employment or licensing opportunities. Moreover, although the FBI will disclose arrest records for employment and licensing purposes authorized by Public Law 92-544 (86 Stat. 1115), arrest data more than one-year old will not be supplied for non-law enforcement purposes unless accompanied by information as to disposition of the arrest. The regulation (28 C.F.R. § 50.12(b)) expressly states that the one-year limitation was adopted to

reduce possible denials of employment opportunities or licensing privileges to individuals who were arrested but never convicted of any offense.

In conclusion, we believe that safeguards are now in place to protect against the types of disclosures of criminal history information sought to be barred by the predecessor of 1 D. C. Code § 2530. We earnestly hope therefore, that you will carefully consider proposing legislation to the Council of the District of Columbia to authorize participation by the District of Columbia in the national crime information system. This could be accomplished by a simple amendment inserting at the end of 1 D. C. Code § 2530 the following additional sentence:

> "However, nothing in this section shall be deemed to prohibit the routine reporting of complete criminal history record information to the Identification Division of the Federal Bureau of Investigation pursuant to participation in the national criminal records system."

We in the federal law enforcement community appreciate your notable efforts to strengthen law enforcement in the District of Columbia and will be most grateful for your assistance in this matter. Of course, representatives of the Department are available to discuss this issue in more detail and to provide such further information as you and your staff may require.

Sincerely,

Robert A. McConnell
Assistant Attorney General

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

August 1, 1983

Honorable Charles McC. Mathias, Jr.
Chairman
Subcommittee on Governmental Efficiency
and the District of Columbia
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The purpose of this letter is to advise you of the position of the Department of Justice with respect to H.R. 3369, which passed in the House on July 25, 1983. By this bill it is proposed that the District of Columbia Board of Parole be granted exclusive parole jurisdiction over District of Columbia Code offenders designated to Federal correctional institutions under authority of the Attorney General. It is the Department's view that this legislation is unnecessary, ill-advised and that the change in parole authority proposed would not serve District of Columbia or Federal law enforcement interests. Accordingly, the Department must strongly oppose enactment.

As recognized in the Report of the Committee on the District of Columbia which accompanies H.R. 3369, the District of Columbia parole system is antiquated. Its statutory framework was established in the 1930's and it has not received significant legislative attention since. Although the Federal parole system was modernized in 1976 with passage of the Parole Commission and Reorganization Act, the D.C. parole system has never received such comprehensive review. It seems particularly ill-advised, therefore, to consider substantial expansion of the jurisdiction of an antiquated parole system without consideration of the need for more comprehensive reform.

The legislation as proposed would result in the application of different parole standards to Federal prisoners in the same Federal institution. Those Federal prisoners committed from the District of Columbia would be under the jurisdiction of the D.C. Parole Board while other inmates in the same institution would be considered for parole by the U. S. Parole Commission. This would obviously undermine the intent of Congress in passing the 1976 Parole Commission and Reorganization Act insofar as it envisioned a uniform Federal parole system and uniform treatment of all Federal prisoners.

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It is also clear that the legislation as proposed would create a substantial number of more practical problems. Foremost of these problems is the question of money. It is unlikely that the D.C. Parole Board could assume additional responsibility for the 1400 D.C. Code offenders presently in Federal institutions without considerably more funds. Additionally, no comment is provided as to how and where parole hearings are to be conducted. Whether D.C. officials travel to Federal institutions or prisoners are returned to the District of Columbia, either procedure would be disruptive and costly. Furthermore, if it is suggested that the Federal parole authorities conduct hearings on behalf of the D.C. authorities, considerable doubt would be cast upon the ability of the D.C. Parole Board to make any kind of meaningful decision. This, of course, could easily result in the premature release on parole of dangerous criminals. Also, we question the draft language of the bill which gives exclusive authority over all parolees; does the D.C. Board intend to supervise, and revoke parolees released outside the District of Columbia?

The proposed bill also does not state how prisoners sentenced in the U. S. District Court of both U. S. Code and D.C. Code violations and designated to Federal institutions would be treated. Presumably, the D.C. Parole Board would wish to make parole determinations at least as to the D.C. Code offenses. This would mean that the U. S. Parole Commission would either be required to yield to the D.C. Parole Board with respect to the U. S. Code violations or make the determination as to the U. S. Code offenses in conjunction with the D.C. Parole Board. Either alternative is unacceptable.

Moreover, it must be recognized that if the District of Columbia was willing and able to provide facilities adequate to house all D.C. Code offenders (including a facility for women), this legislation would be unnecessary. Under existing law, the D.C. Parole Board has jurisdiction over all offenders incarcerated in the District of Columbia.

There also appears to be substantial need for reform of the D.C. parole system. In this regard, the D. C. Board of Parole reveals in its 1982 annual report that 61% of the adult offenders were granted parole at their initial parole hearing and that 73% of the remainder were granted parole upon a rehearing. The Board also reports, however, that based upon a study of a selected sample of 322 parolees released on parole between 1977 and 1979, 52% were re-arrested during the first two years of parole supervision. Of the parolees who were re-arrested, 77% were convicted for crimes committed while on parole. Given the very high percentage of parolees released at the time of initial parole consideration and the very high rate of recidivist criminal activity among those released, the policies and procedures of the D.C. Board of Parole deserve a thorough review to assess needed changes before the Board is given significant new authority.

It is also noteworthy that despite the large number of D.C. parolees who commit crimes following parole release, parole apparently is revoked in a relatively small percentage of the cases. In this regard, the D.C. Board of Parole reports that of those parolees in its 1977-1979 sample who were convicted of crimes while on parole, parole was revoked because of the new offense in less than one half of the cases. Although the reason for this rather alarming statistic is not explained, it appears that it may be attributed to D.C. Parole Board policy of not issuing parole violator warrants for certain offenses. In this regard, the Board lists in its 1982 Annual Report the types of offenses it terms "Eligible Offenses" for purposes of issuance of parole violator warrants. It appears that as a matter of policy, the Board will not issue parole violator warrants for burglary of commercial establishments, possession of firearms (unless the defendant is arrested with the weapon in his hand or on his person), grand larceny, embezzlement, fraud, forgery and uttering and for a host other violations of the District of Columbia Code or United States Code.

This apparent policy which allows substantial numbers of parolees to continue on parole even after arrest and conviction of serious crimes is simply intolerable and is a matter of grave law enforcement concern. It is nevertheless proposed that the jurisdiction of the D.C. Board of Parole be substantially expanded to include those D.C. Code offenders presently under the jurisdiction of the U. S. Parole Commission. These offenders, however, include some of the most dangerous and violent criminals convicted in the District of Columbia. Premature release of such individuals pursuant to ill-advised and antiquated parole policies would pose a real and direct threat to law enforcement interests in the District of Columbia. There is cause, therefore, to proceed with considerable caution.

There is also substantial concern about the present ability of the Board to implement the proposed legislation. Without prior study and planning, it is difficult to meaningfully estimate the implementation problems and costs associated with expansion of D.C. parole jurisdiction. It must also be noted that the District of Columbia specifically requested that the law it seeks not be made immediately effective, underscoring lack of proper prior study and planning. Any further consideration of H.R. 3369 should at least be deferred until the District of Columbia completes and presents its plans for appropriate scrutiny.

Additionally, the issues raised in Michael Cosgrove, et al. v. William French Smith, C.A. No. 81-1924, presently on remand to the United States District Court for the District of Columbia are advanced in support of the need for the proposed legislation. The complaint in Cosgrove is premised upon the allegation that the D.C. Parole Board is more lenient than the U. S. Parole Commission with respect to parole release determination and that this creates an unconstitutional disparity of treatment between D.C. Code offenders depending upon whether they are incarcerated in a District of Columbia or a Federal institution. It must be emphasized that Cosgrove is a pending case and there has been no judicial determination that the present division of parole responsibility is Constitutionally infirm. The pendency of Cosgrove is certainly no reason for precipitous legislative action which could have drastic consequences for the citizens of the District of Columbia.

Finally, we emphasize that other legislation has been introduced which impacts materially upon H.R. 2319. In this regard the Administration's Comprehensive Crime Control Act of 1983 (H.R. 2151, S. 829) contains certain provisions which would abolish the Parole Commission altogether in conjunction with a return to determinate sentencing for Federal crimes. Although the prospects for this legislation are uncertain, any structured changes in the present allocation of parole authority should certainly wait more comprehensive consideration.

In sum, it has not been demonstrated that the Board of Parole should or is in a position properly to assume additional responsibility. There is ample evidence that the antiquated District of Columbia parole system is in need of substantial revision and to expand its jurisdiction without full and adequate attention to law enforcement interests would be inadvisable. Attenton should also be addressed to the problem of prison facilities within the District of Columbia. If parole reform is the objective, reform should be of the District of Columbia parole statute which has been in force without major revision for over half a century. The bill which is proposed tampers improperly with the modern Federal parole system. It is strongly recommended, therefore, that H.R. 3369 not be enacted.

The Office of Management and Budget advises this Department that there is no objection to the submission of this report of position from the standpoint of the Administration's program.

Sincerely,

Robert A. McConnell

Robert A. McConnell
Assistant Attorney General

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

November 15, 1983

MEMORANDUM TO: CONNIE HORNER, PAD/EG
MIKE HOROWITZ, GC
JOHN ROBERTS, WH COUNSEL'S OFFICE Pm 1/2

FROM: JAN FOX, LRD Jan Fox

SUBJECT: Justice Letter on D.C. "Chadha" Bill

Justice has finally submitted for OMB clearance a report to Congress on H.R. 3932, which would amend the legislative veto provisions in the District of Columbia Home Rule Act. The Justice report reflects the decision to support a requirement for positive Congressional enactment of changes to the D.C. criminal code.

The Senate Governmental Affairs Committee is marking up the House passed version of the bill tomorrow (11/16). Accordingly, we need to clear the Justice letter this afternoon. We have sent the Justice letter to the District Government for review and have advised them that comments are needed no later than 2:00 P.M. today.

Please let me have your comments by 3:00 P.M. today. If we do not hear from you by then, we will need to assume that you have no objections.

cc: John Cooney
Anna Dixon

COPY

THE WHITE HOUSE

WASHINGTON

November 16, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: D.C. Chadha Correspondence

David Clarke, Chairman of the D.C. Council, and Wilhelmina Rolark, Chairperson of the Council's Committee on the Judiciary, have written you in response to the draft letter from Robert McConnell on H.R. 3932, the D.C. Chadha bill. As you know, OMB provided the Council with a copy of the draft for comment. The letter itself was sent out early this morning, with the changes we discussed yesterday.

The letter contends that our position entails "disastrous consequences" for Home Rule, and would impede the ability of the Council to enact appropriate criminal laws to protect the citizens of the District. The letter reviews actions of the Council with respect to criminal law, in an effort to mount an argument that our fears of laxness are unjustified. The letter also notes that Congress, unlike the Council, is likely to ignore local District criminal law problems.

Briefly, the answers: Our proposal does not have "disastrous consequences" for Home Rule. This bill is not, in the first place, a Home Rule bill at all but a bill to correct constitutional problems pointed out by Chadha. We support giving the Council plenary authority in every area except criminal law. Such an approach continues a distinction in current law permitting easier Congressional review of Council actions in the criminal law area.

As to what the Council has done in the criminal area, there is some good and some bad. Our U.S. Attorneys Office, however, which deals with these issues on a day-to-day basis, advised us that zany ideas have been blocked only because of the threat of Congressional veto. The U.S. Attorneys Office was horrified at the prospect of the Council legislating in this area without the check of effective Congressional control.

Finally, the Council can still act in this area. The fear that Congress will have to become intimately involved in the minutiae of local law is unfounded. All that the Council need do is obtain approval of its actions, which should be forthcoming for reasonable proposals.

I do not think you should send a substantive reply to Clark and Rolark. The letter they're concerned about was from McConnell; their reply should be directed to him. This approach will help keep the dispute between the District and Justice, rather than the District and the White House, to the extent that is possible in light of OMB's "leaks" to District officials. A brief reply noting you have referred the letter to Justice for consideration and response is attached. I have copied Horowitz to let him know we think the matter should be kept over at Justice.

Attachment

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

ROUTE SLIP

TO	Mike Horowitz	Take necessary action	☐
	Connie Horner	Approval or signature	☐
	John Roberts ✓	Comment	☐
	John Cooney	Prepare reply	☐
	Anna Dixon	Discuss with me	☐
		For your information	☐
		See remarks below	☐
FROM	Jan Fox (x4874)	DATE	11-17-83

REMARKS

For your information, attached is Mayor Barry's response to the Justice report on H.R. 3932, D.C. Chadha amendments. The letter I sent you Tuesday was from the D.C. Council.

OMB FORM 4
Rev Aug 70

Murr

THE DISTRICT OF COLUMBIA

MARION BARRY JR.
MAYOR

WASHINGTON, D.C. 20004

November 15, 1983

The Honorable Ronald Reagan
President
United States of America
The White House
Washington, D.C.

Dear Mr. President:

We have been asked to comment on the Administration's draft position statement on H.R. 3932, a bill "to amend the District of Columbia Self-Government and Governmental Reorganization Act, and for other purposes". This legislation is designed to cure possible unconstitutional legislative veto provisions in the District of Columbia's Home Rule Act by changing those veto provisions to joint resolutions of the Congress.

The Administration's position, drafted by the Department of Justice and concurred in by OMB, opposes enactment of H.R. 3932 unless it is amended to provide that laws passed by the Council of the District of Columbia amending Titles 22, 23 and 24 of the D.C. Code, our criminal code, only take effect upon passage of a joint resolution of approval by the Congress.

We are unalterably opposed to the Administration's position. Such an amendment would represent a giant step backward in our quest for Home Rule for the District of Columbia.

The Administration's position is based largely on a theory that the criminal laws of the District would require "special treatment" in any legislation which amends the Self-Government Act to "cure" problems traceable to the decision in Immigration and Naturalization Service v. Chadha 103 S. Ct. 2764 (1983).

Contrary to the Department of Justice's analysis, no reading of the legislative history of section 602(a)(9) of the Self-Government Act or the supporting case law suggests the validity of a theory of "special treatment" of the District's criminal laws under which the jurisdiction and authority of the Council of the District of Columbia over such laws would be curbed drastically or eliminated altogether. The original draft of section 602(a)(9) of the Self-Government Act contained an absolute prohibition on the Council's enacting any law with respect to titles 22, 23 and 24 of the D.C. Code. However, when Public Law 93-198 (the Self-Government Act) was adopted, section 602(a)(9) contained not an absolute prohibition but merely a 24 month postponement of the authority; this was subsequently extended for an additional 24 month period.

Crucial to note, is the fact that the time limitation was just that -- a "time constraint" and not an absolute prohibition. See McIntosh v. Washington, D.C. App., 395 A.2d 744 (1978) and District of Columbia v. Sullivan, D.C. App., 436 A.2d 364, 366 (1981). Congress wanted the Council to have the power to change the criminal laws subject only to a reservation of some time so that it could consider the findings of its Law Revision Commission (for the District of Columbia), which had been asked to examine all the District's criminal laws, before determining whether the Congress itself would amend the District's criminal law. The legislative history and the cases cited above clearly reveal that the Congress of the United States made an affirmative determination that the Council should have this authority, albeit delayed, to enact criminal laws of the District, subject to a one house veto of the Congress.1

1/ See House Committee on the District of Columbia, 93d Cong. Home Rule for the District of Columbia, 1973-1974 (Comm. Print 1974):

1. Rep. Adams (House Floor)

> We have said also that there should not be a change in the criminal statutes. The reason for that is that there is proposed before the Committee on the District of Columbia at the present time a commission to review the criminal code. There will be hearings on that, so that for the present time we know where we are with it and can move on that subject without bringing it into this bill, which basically provides a structure of locally elected government. (P. 217)

(footnote continued on next page)

In developing its "special treatment" position, the Department of Justice relies heavily on the case of Palmore v. United States, 411 U.S. 389. Nonetheless, it is instructive to note that Palmore was decided prior to the adoption of the Self-Government Act. But even under Palmore, the Supreme Court of the United States clearly recognized that Congress in the District of Columbia Court Reform and Criminal Procedure Act of 1970 intended "to establish an entirely new court system with functions essentially similar to those of the local courts

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footnote 1/ continued

2. Conference Committee Report:

The Conference Committee also agreed to transfer authority to the Council to make changes in Titles 22, 23 and 24 of the District of Columbia Code, effective January 2, 1977. After that date, changes in Titles 22, 23 and 24 by the Council shall be subject to a Congressional veto by either House of Congress within 30 legislative days. The expedited procedure provided in section 604 shall apply to changes in Titles 22, 23 and 24. It is the intention of the Conferees that their respective legislative committees will seek to revise the District of Columbia Criminal Code prior to the effective date of the transfer of authority referred to. (pp. 3013-3014).

3. Rep. Diggs ("Dear Colleague" letter)

The House passed bill prohibited the Council from making any changes in Titles 22, 23 and 24 of the D.C. Code. It was felt that since the District criminal code has not been substantially reviewed and revised for more than seventy years, this provision would hamper constructive revision of the criminal code. Since the District Committee is expected to act in the very near future on H.R. 7412, a bill which I introduced to create a law revision commission for the District, the Conference compromise was adopted. The law revision commission will be given a mandate to turn initially to revision of the D.C. Criminal Code and report its recommendations to the Congress. The Congress will then have a chance to make the much needed revision of the criminal code. This should take no longer than two years. Subsequent to that action, it seems appropriate and consistent with the concept of self-determination that the Council be given the authority to make whatever subsequent modifications in the criminal code as are deemed necessary. (pp. 3041-3042).

found in the 50 states of the Union with responsibilities for trying and deciding those distinctively local controversies that arise under local law, including local criminal laws having little, if any, impact beyond the jurisdiction." 411 U.S. at 409. Therefore, Congress created local courts designed to handle matters of local concern, including local criminal law.

More importantly, in a later case - clearly decided after the effective date of the Self-Government Act - the Supreme Court of the United States in Key v. Doyle, 434 U.S. 66 (1977), not only clarified its decision in Palmore, but also clearly recognized the District's courts as "local courts" which invariably pass on "a law of exclusively local application," and that such a law cannot be construed as a "statute of the United States." See 434 U.S. at 66, 67 and 69. See also NOTE, "Federal and Local Jurisdiction in the District of Columbia, 92 Yale Law Journal 292 (1982), which states in inter alia:

> In the Home Rule Act, Congress did in fact delegate to the current District local government the power to define local offenses, and there is little doubt that this delegation is constitutional. The nondelegation justification for continuing to categorize local offense as "crimes against the United States", therefore has been removed. 92 Yale Law Journal at 303.
>
> ...Congress acts as a state-like sovereign when enacting local law. D.C. Code matters, therefore, do not "arise under" the "laws of the United States" and D.C. Code offenses are crimes against the District of Columbia, not against the United States. Since the real party in interest in local prosecutions is the District of Columbia, in prosecuting local crimes in the District's United States Attorney acts not in his capacity as a federal officer, but in a local capacity. 92 Yale Law Journal at 294-295.

Finally, one of the arguments advanced for the Adminstration's position is protection of the federal interest. With all due respect, enactment of H.R. 3932 in no way lessens Congress' inherent authority under Article 1, section 8, clause 17 of the Constitution.

What is also disturbing about the Administration's position is that it comes at the last possible moment. The District has actively sought to resolve the issues raised by the Supreme Court decision in INS v. Chadha since August, because the questions about the constitutionality of our Home Rule Charter have effectively precluded the city from issuing revenue bonds. We wanted to have this matter resolved before the Congress adjourned.

In October the House passed legislation, H.R. 3932. Initially, OMB advised the House District Committee that it had no objection to the legislation. On the day of the floor action, it withdrew its no objection, but did not oppose the legislation at that time nor did the Administration object when the Senate Governmental Affairs Subcommittee on Government Efficiency and the District of Columbia considered virtually identical legislation. Upon hearing from OMB about ten days ago that the Administration had problems with the legislation, we repeatedly sought to obtain a clear statement of its position. Quite frankly, Mr. President, I am distressed to say that members of your Administration were less than candid. They misled me and my staff and it was not until last evening at about 6:45 p.m. that I finally received the Administration's position.

As Mayor of the District of Columbia and an ardent supporter of full home rule for the city, I must state unequivocally that I cannot support your Administration's position. I must note also, that because we will be unable to go to the bond market without some legislation, it will be necessary for the city to continue to borrow from the U.S. Treasury to meet our obligations.

In sum, the Administration's position effectively revokes substantial authority granted the city under the Home Rule Act and, at the same time, significantly undermines the financial independence of the District.

I urge you to reconsider the Adminstration's position and to support H.R. 3932.

Sincerely,

Marion Barry, Jr.
Mayor

The Washington Times

DATE: 11-17-83

PAGE: 9A

Barry says D.C. home rule threatened by changes

BY A WASHINGTON TIMES STAFF WRITER

District Mayor Marion Barry yesterday blasted Reagan administration recommendations for major changes in the District's home rule authority, charging they constitute "a grave threat" to the independence of District government.

Barry told reporters during his monthly press conference that unless Justice Department officials withdraw their objection to the home rule legislation being considered by Congress, the District will soon experience "a crisis in cash flow" because of the failure to clarify the District's authority to sell bonds.

The mayor's remarks were his first public comment on the expanding controversy that threatens to derail legislation District officials say is vital to the financial stability of the District government.

Their concern over the sudden intervention of Justice Department officials was amplified further by the decision to release copies of a tersely worded letter Barry wrote Tuesday to President Reagan.

Justice Department officials have not only incorrectly interpreted the intent of Congress in approving the District's home rule charter, Barry wrote, but they have misled District officials about what they intended to recommend.

"The administration's position effectively revokes substantial authority granted the city ... and significantly undermines the financial independence of the District," Barry complained in the letter.

With the concurrence of City Council Chairman David Clarke and Sen. Charles Mathias, R-Md., chairman of the subcommittee on governmental efficiency and the District of Columbia, Barry said he has decided to unequivocably reject the changes being sought by Justice Department officials.

"We should not mortgage our home-rule freedom," Barry declared at his press conference. "We are being held hostage."

Justice Department officials refused to comment, and refused to explain why they are withholding comment.

In response to the June Supreme Court ruling declaring legislative vetoes unconstitutional, District officials sought congressional approval of legislation to clarify its home rule powers and congressional authority to override decisions by District officials.

The bill, under consideration since August and approved by the House in September, would require that no District legislation could be rejected by Congress without a joint resolution approved by the president.

Currently, changes in the District's criminal law can be rejected by a one-house veto, civil law changes by a resolution passed by both houses.

Assistant Attorney General Robert McConnell, acting with the concurrence of officials in the Office of Management and Budget, has called for amendments that would preclude any legislation dealing with criminal statutes from becoming law without approval by both chambers and the president.

The Supreme Court's ruling, District officials say, creates an ambiguity surrounding the District's power to sell bonds. Those sales are being delayed pending approval of the home-rule legislation, but if that delay becomes too extended, the District's ability to sell short-term bonds to cover its cash needs also could be jeopardized.

Barry all but conceded yesterday that Justice Department officials have blocked approval of the bill for the remainder of the year. Unless the legislation is approved early next year, he warned, the District may find itself unable to pay its bills.

McConnell has told Senate Governmental Affairs Committee Chairman Sen. William Roth, R-Del., that criminal code legislation requires special treatment by Congress because of the large number of federal workers in the District and the presence of a sizable diplomatic community.

He wrote that as part of the reason Justice officials oppose the legislation is concern prompted by bills being considered by the District council that would alleviate overcrowding in the District's prisons by making it easier for inmates to become eligible for parole.

Former U.S. Attorney Stanley Harris, among others, strongly opposed the parole eligibility legislation. Harris aides have acknowledged informing Justice officials of their concern about the home-rule legislation.

(1)

cont'd.

District officials say they do not understand what prompted the sudden opposition to the legislation.

They say they can solve the prison overcrowding without jeopardizing the public's safety, and without building a new prison.

Barry noted yesterday that if congressmen think it necessary, the District's home-rule charter gives them the power to write their own laws for the District and implement them unilaterally, subject only to approval by the president.

"That's their protection," Barry said.

Barry noted that the District's version of the bill cleared the House and a Senate subcommittee before any federal official intervened. Even then, Barry said he did not receive formal notification of the Justice Department position until late Monday, 10 days after word of their objections first surfaced.

"I am distressed to say that members of your administration were less than candid," Barry wrote Reagan.

(2)

The New York Times

DATE: 11-18-83
PAGE: A24

Capital Worry: Are the Laws Legal?

By LESLIE MAITLAND WERNER
Special to The New York Times

WASHINGTON, Nov. 17 — The government of the District of Columbia may not legally exist, and all city laws may be null and void.

That is the conclusion reached by many city and Federal officials here as a result of a recent Supreme Court decision that found Congressional vetoes of executive actions unconstitutional.

The legislative veto, a Congressional favorite, permitted Congress to vote to overrule actions by Federal agencies without the concurrence of the President. Provisions for such vetoes were included in many laws and acts, including the 1973 act that gave home rule to the District of Columbia, a Federal entity.

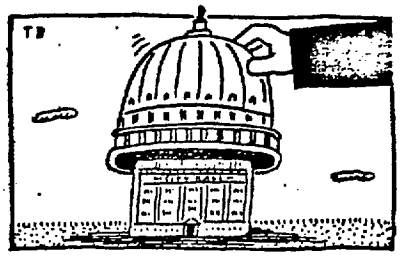
Therein lies the capital city's current problem. Because the law gave Congress the authority to veto actions by the Washington City Council and because the legislative veto has now been declared unconstitutional, many Federal and city officials believe the entire home rule act is invalid and must be changed.

Impact on City Bonds

What is more, some residents worry that the outcome of all this may be a return to the uneasy relationship the city had with Congress in the days before the legislators loosened their jealous grip and granted a measure of home rule.

Some city officials have been pressing Congress to clarify the matter before its expected adjournment at the end of the week. They say the situation is especially critical because the doubt it has created has prevented them from issuing the bonds the city needs to pay its bills.

"The worst case view is that there is no law in the city now, and the Government does not exist," said Pauline Schneider, director of intergovernmental relations for the city. "There are at least three sets of bond issues now pending, worth millions and millions. We desperately need this legislation."



'The worst case view is that there is no law in the city now.'

—Pauline Schneider, city aide

The House has already made one effort to remedy the situation, passing a bill that would permit a Congressional veto of a City Council action only if the veto was approved by both houses, as well as the President. But when the issue reached the Senate, the Justice Department said it was not happy with the House action.

The department noted that the original Home Rule Act gave Congress a special measure of control over criminal code legislation passed by the City Council. The act, Justice Department officials pointed out, required the vote of both houses to overturn most actions by the city but the vote of only one house to overturn city action regarding law enforcement.

If Congress planned to rewrite the Home Rule Act, the department said, it should include a provision once more giving itself an extra measure of control over city law enforcement. The department then suggested that Congress write a law stating that no city action regarding law enforcement would take effect until Congress had voted approval of that action and the President had concurred.

In other words, most actions by the City Council would automatically take effect unless Congress and the President took it upon themselves to disapprove them. But on matters regarding law enforcement, no action by the City Council would take effect until Congress and the President had concurred.

A Special Relationship

Why this approach?

Justice Department officials said their reasoning was based on the fact that law enforcement in the District of Columbia was more closely tied to the Federal Government than elsewhere. Unlike any other city, they noted, the local prosecutor in Washington is the United States Attorney, the local sheriff is the United States Marshal, and the city's courts are Federal courts.

The Administration's position has deeply angered city leaders. In a letter to the President, Mayor Marion S. Barry Jr. said, "I must state unequivocally that I cannot support your Administration's position." The position, he continued, "effectively revokes substantial authority granted the city under the Home Rule Act."

The chairman of the City Council, David A. Clarke, said the Administration's approach "would take away power we've exercised reasonably" and make it much more difficult for the city to enact criminal justice measures. "The District of Columbia has made considerable improvements in the criminal law," he added. "We've passed bills the Congress couldn't pass."

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Capital Worry: Are the Laws Legal?

By LESLIE MAITLAND WERNER
Special to The New York Times

WASHINGTON, Nov. 17— The government of the District of Columbia may not legally exist, and all city laws may be null and void.

That is the conclusion reached by many city and Federal officials here as a result of a recent Supreme Court decision that found Congressional vetoes of executive actions unconstitutional.

The legislative veto, a Congressional favorite, permitted Congress to vote to overrule actions by Federal agencies without the concurrence of the President. Provisions for such vetoes were included in many laws and acts, including the 1973 act that gave home rule to the District of Columbia, a Federal entity.

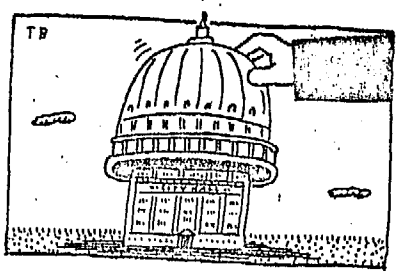
Therein lies the capital city's current problem. Because the law gave Congress the authority to veto actions by the Washington City Council and because the legislative veto has now been declared unconstitutional, many Federal and city officials believe the entire home rule act is invalid and must be changed.

Impact on City Bonds

What is more, some residents worry that the outcome of all this may be a return to the uneasy relationship the city had with Congress in the days before the legislators loosened their jealous grip and granted a measure of home rule.

Some city officials have been pressing Congress to clarify the matter before its expected adjournment at the end of the week. They say the situation is especially critical because the doubt it has created has prevented them from issuing the bonds the city needs to pay its bills.

"The worst case view is that there is no law in the city now, and the Government does not exist," said Pauline Schneider, director of intergovernmental relations for the city. "There are at least three sets of bond issues now pending, worth millions and millions. We desperately need this legislation."



> 'The worst case view is that there is no law in the city now.'
>
> —*Pauline Schneider, city aide*

The House has already made one effort to remedy the situation, passing a bill that would permit a Congressional veto of a City Council action only if the veto was approved by both houses, as well as the President. But when the issue reached the Senate, the Justice Department said it was not happy with the House action.

The department noted that the original Home Rule Act gave Congress a special measure of control over criminal code legislation passed by the City Council. The act, Justice Department officials pointed out, required the vote of both houses to overturn most actions by the city but the vote of only one house to overturn city action regarding law enforcement.

If Congress planned to rewrite the Home Rule Act, the department said, it should include a provision once more giving itself an extra measure of control over city law enforcement. The department then suggested that Congress write a law stating that no city action regarding law enforcement would take effect until Congress had voted approval of that action and the President had concurred.

In other words, most actions by the City Council would automatically take effect unless Congress and the President took it upon themselves to disapprove them. But on matters regarding law enforcement, no action by the City Council would take effect until Congress and the President had concurred.

A Special Relationship

Why this approach?

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